U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17141450

Date: JUN. 2, 2021

Appeal of a California Service Center Decision

Form I-129F, Petition for Alien Fiancé(e)

The Petitioner, a U.S. citizen, seeks the Beneficiary's admission to the United States under the fiancé(e) visa classification. See Immigration and Nationality Act (the Act) section 101(a)(15)(K)(i), 8 U.S.C. § 1101(a)(15)(K)(i) (the "K-1" visa classification). A U.S. citizen may petition to bring a fiancée to the United States in K-1 status for marriage.

The Director of the California Service Center denied the petition, concluding that the Petitioner was not eligible to conclude a legally valid marriage at the time of filing and made material changes to the petition . On appeal, the Petitioner provides a brief and contends that the Director erred.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[1] The Administrative Appeals Office (AAO) reviews the questions in this matter de novo.[2] Upon de novo review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 214(d)(1) of the Act states that a fiancé(e) petition can be approved only if the petitioner establishes that the parties have previously met in person within two years before the date of filing the fiancé(e) petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of 90 days after the beneficiary's arrival. U.S. Citizenship and Immigration Services (USCIS) maintains the discretion to waive the requirement of an in-person meeting between the two parties if compliance would either result in extreme hardship to the petitioner, or violate strict and long-established customs of the beneficiary's foreign culture or social practice. Id.; 8 C.F.R. § 214.2(k)(2).

The regulation at 8 C.F.R. § 103.2(b)(1) states that an applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition.

[1] Section 291 of the Act; Matter of Chawathe, 25 I&N Dec. 369, 375 (AAO 2010).
[2] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Petitioner filed the fiancé(e) petition on behalf of the Beneficiary, who is the Petitioner's first cousin and was under the age of 18 at the time of filing, in January 2020. She indicated that the Beneficiary intended to reside with her in Ohio, her state of current residence.

Because Ohio prohibits marriage between first cousins and restricts marriage for individuals under 18 years of age, the Director found the initially submitted evidence insufficient to establish eligibility for the benefit and issued a request for evidence (RFE) requiring, in part: (1) evidence establishing the parties would be able to conclude a legally valid marriage that would be recognized in their state of intended residence; and (2) information regarding the marriage requirements of the state in which they planned to wed along with evidence that they met those requirements.

The response included affidavits from the Petitioner, Beneficiary, and Petitioner's mother; copies of passport entry and exit stamps, boarding passes; and flight tickets; and instant messages between the Petitioner and Beneficiary. The affidavits from the Petitioner and Beneficiary stated their intent to wed in New York or any other jurisdiction that allows for first cousin marriage, and that they were unaware of any law in Ohio that would invalidate their marriage from another jurisdiction. They also stated that they had considered moving to other states and that they did not foresee their biological relationship being a negative issue with their marital relationship.

The Director found the Petitioner's response insufficient and denied the petition, concluding that the Petitioner was (1) unable to demonstrate they were legally able to conclude a valid marriage with the Beneficiary at the time of filing; and (2) had made material changes to the petition to conform to USCIS requirements, because the petition initially indicated the parties intended to marry and reside in Ohio.

On appeal, the Petitioner provides a brief and contends the petition should be approved and argues that the Director erred in concluding there had been a material change. The Petitioner also argues that the Director misrepresented the facts, and that neither the petition nor the RFE response stated the parties would marry in Ohio.

In regard to material change, we agree with the Petitioner's assessment. Neither the fiancé(e) petition nor the initial supporting documents indicate where the parties would marry or specifically mention Ohio as the intended state for the marriage, and the RFE response merely clarified the parties' intent to marry in New York or another state that would allow first cousin marriage. This clarification, however, does not change the information presented in the initial submission. Likewise, the Petitioner's and Beneficiary's affidavits do not appear to contradict the fiancé(e) petition, because they provide clarification the parties would consider living in other states upon his arrival to the U.S. but does not explicitly state they have an intention to live elsewhere. As such, the petition does not appear to have involved any material changes. We therefore withdraw the Director's statements regarding material changes.

However, with all that being said, the Petitioner has not demonstrated that, at the time of filing, she was legally able to conclude a valid marriage with the Beneficiary.[3] Although marriage between first cousins in New York can take place, the Petitioner has not established that she and the Beneficiary would have been eligible to receive a marriage license in New York as the Beneficiary was 17 years old at the time the Petitioner filed the fiancé(e) petition. Section 15 of the New York Domestic Relations Law requires (1) parental consent for individuals who have applied for marriage licenses and are at least seventeen years of age but are under eighteen years of age; and (2) written approval of a justice of the supreme court or judge of a family court. In addition, section 7 of the New York Domestic Relations Law states that marriage in New York involving an individual who is under the age of legal consent is voidable. The RFE requested that the Petitioner to submit the marriage requirements for the state in which the parties plan to wed and evidence that the parties are able to comply with this state's marriage requirements, but the Petitioner did not submit any documents demonstrating the Beneficiary could enter a legally valid marriage in New York or for any other state at the time of filing. With specific regard to New York, the Petitioner submitted neither the requisite parental consent for the Beneficiary nor the written approval from a judge or justice. Moreover, even if the Beneficiary is now over 18 years old, as noted by the Director, a petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. See Matter of Katigbak, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Therefore, the Petitioner has not demonstrated the parties are legally able to conclude a valid marriage at the time of filing pursuant to section 214(d)(1) of the Act and the regulation at 8 C.F.R. §§ 214.2(k)(2) and § 103.2(b)(1).

III. CONCLUSION

The Petitioner has not established that she would have been able to conclude a valid marriage to the Beneficiary in the United States at the time of filing. As such, the Petitioner has not met the statutory and regulatory requirements for classifying the Beneficiary as a K-1 nonimmigrant and the appeal is dismissed.[4]

ORDER: The appeal is dismissed.

[3] As mentioned, USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit they are seeking at the time the petition is filed. 8 C.F.R. § 103.2(b)(1).

[4] The Petitioner appears to have filed a new Form I-129F on behalf of the Beneficiary in October 2020 [redacted]. Our decision dismissing this appeal and affirming the Director's denial of the instant fiancé(e) petition is made without prejudice to that new fiancé(e) petition.